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INDEPENDENT

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging
Threats, and International Relations

From: Christopher Shays
Chairman

Date: October 26, 2005 

Subject: Briefing memo for the August 2nd Subcommittee field hearing

Attached find the briefing memo required by Committee rules for the field hearing on Monday October 31st entitled, "*Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities, Part II*". The hearing will convene at 9:00 a.m., in the Council Chambers of the City of San Mateo, 330 West 20th Avenue, San Mateo, California.

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MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Vincent Chase, Chief Investigator

Date: October 26, 2005

Subject: Briefing memorandum for the field hearing entitled, entitled, *"Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities"* at 9:00 a.m., Council Chambers of the City of San Mateo, 330 West 20th Avenue, San Mateo, California.

PURPOSE OF HEARING

The purpose of the hearing is to examine Government Accountability Office (GAO) findings and recommendation regarding guidelines for the storage, monitoring and protection of state and local explosive materials.

HEARING ISSUE

1. What challenges do federal, state and local authorities face in securing and protecting publicly owned explosive storage facilities?

BACKGROUND

In August 2004, the Subcommittee held a hearing concerning the security of publicly owned explosive storage facilities due to the attractiveness of the material to terrorists and others with malevolent intent.¹

The Subcommittee is concerned about the vulnerability of explosive storage facilities to terrorist attacks and whether action is being taken by federal and local authorities to address facility vulnerabilities and risks in a systematic and comprehensive manner. As a result, the Subcommittee asked the General Accountability Office (GAO) to examine the vulnerability of publicly owned explosive storage facilities. **(Attachment 1)** GAO will issue their report and discuss their findings and recommendations at the October 31, 2005 field hearing. **(Attachment 2)**

ATF has extensive rules and regulations for safeguarding explosive storage facilities operated by business, industry and private individuals. Those regulations for the most part deal with storage of explosives, facility construction, and inspections. In addition, Congress strengthened the licensing and inspection procedures under the Safe Explosives Act to give ATF additional authority to monitor who can operate and maintain explosives storage facilities. This change resulted in approximately 3,000 additional licensees or approximately 12,000 permits nationwide. Subcommittee staff has been unable to determine how many additional permits would be generated should ATF be required to license and inspect state and local storage facilities.

Adherence to federal security requirements for storage facilities maintained by state and local law enforcement officials is voluntary. As a result, it is unclear whether local law enforcement agencies meet minimal ATF safeguard guidelines or whether state and local security requirements provide for adequate security.

More than 5.5 billion pounds of explosives are used each year in the United States. **(Attachment 2, pg.1)** These explosives are used by both

¹ *HOMELAND SECURITY: Surveillance and Monitoring of Explosive Storage Facilities*, Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, August 2, 2004, Serial No. 108-259.

public sector entities (such local law enforcement agencies and bomb squads) and private sector companies for mining, construction, and avalanche control.

Under current federal explosive laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for licensing and regulating explosives manufacturers, importers, dealers and users. **(Web Resource 1)**

The Bureau of Alcohol, Tobacco, Firearms and Explosives

The Bureau of Alcohol, Tobacco, Firearms and Explosives authority to regulate explosives stems originally from the Organized Crime Control Act of 1970² and was expanded further by the enactment of the Safe Explosives Act in 2002.³ In addition, ATF was transferred from the Department of Treasury and became a new bureau of the Department of Justice on January 24, 2003 pursuant to the Homeland Security Act of 2002.⁴

ATF is charged with the oversight over all persons involved in the sale, manufacture, transportation and storage of explosives. ATF enforcement includes licensing individuals and businesses engaged in importing, manufacturing, storage, and transportation of explosives. The definition of person found in AFT regulations specifically excludes all public entities such as state, county, and local law enforcement agencies.⁵ **(Attachment 3)**

The ATF designates five different types of storage facilities, also known as magazines. **(Attachment 4)** Explosive storage facilities have uniform inspection and location requirements:

² P.L. 91-452

³ P. L.107-296

⁴ P. L.107-296

⁵ The ATF has held that certain public entities, (such as public utility companies engaged in line and facility construction,) which manufacture explosives on a regular or continual basis are considered to be engaged in the business of manufacturing materials and must be appropriately licensed. As such these public companies are subject to ATF oversight. See, ATF Rule. 75-31.

- **Inspection Requirements** Any person storing explosive materials shall inspect his magazines at least every seven days, often enough to determine whether there has been an unauthorized entry or unauthorized removal from the magazine.
- **Location Requirements** There is a sliding scale (based on the amount of the explosives stored) for the distance from inhabited buildings, public highways, or from other magazines. As an example, a magazine storing between 200 and 250 pounds of explosives would have to be built at least 510 feet from a building, 210 feet from a low traffic highway and 378 from a high traffic highway. In addition the barricades would need to be kept at least 46 feet from another magazine.
- **Construction Regulations** Buildings are to have no openings except for entrances and ventilation. The doors are to be constructed of not less than $\frac{1}{4}$ inch plate steel and lined with at least two inches of hardwood. Hinges and hasps are to be attached to the doors by welding, riveting or bolting on the inside of the door.
- **Security Locks** Each door is to be equipped with a lock. The regulations allow for various types of locks either (i) two mortise locks (ii) two padlocks fastened in separate hasps and staples (iii) a combination of mortise lock and padlock (iv) a mortise lock that requires two keys to open or (v) a three-point lock. Padlocks must be protected with not less than $\frac{1}{4}$ inch steel hoods constructed so as to prevent sawing or lever action. The regulations on locks do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be activated from the outside.

(Attachment 5)

Notwithstanding the security requirements described above, ATF storage regulations do not require explosives storage facilities to have physical security features such as fences, restricted property access, exterior lighting, alarm systems, or electronic surveillance. **(Attachment 6)**

Although there is no obligation on the part of local and state authorities to construct storage bunkers in accordance with ATF regulations, many

agencies voluntarily comply with ATF regulations in addition to any guidelines promulgated by state and local governments.

The Safe Explosives Act

The Safe Explosives Act requires people who want to acquire and possess explosive materials to obtain a permit. The purpose is to impede the availability of explosives to terrorists, felons and others prohibited by federal law from possessing these materials. **(Attachment 7)**

Under then existing law anyone who was involved in interstate shipment, purchase or possession of explosives needs a federal permit. The Safe Explosives Act added the same requirement for intrastate purchases. It calls for two types of permits for intrastate purchasers: user permits and limited user permits. The user permit lasts for three years and allows unlimited explosives purchases. The limited user permit expires after one year, and allows for only six purchases. The two-tier system ensures that low-volume users will not be overly burdened by regulations. The limited permit, like the user permit, imposes common-sense rules such as background checks, monitoring of explosives purchases, secure storage, and report of sale or theft of explosives. **(Attachment 8)**

The Act also improves public safety by requiring permit holders to adhere to proper storage and safety regulations of explosives as proscribed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. These provisions will help ensure the safety of explosives handlers, and prevent accidental or criminal detonation of explosives. In addition, ATF is required to physically inspect all ATF licensees at least once every three years to insure compliance with explosive storage regulations. **(Attachment 6, pg. 2)**

In 2004 ATF sent out a security checklist **(Attachment 9)** that outlines voluntary actions businesses and individuals could utilize to make their explosives storage facilities more secure. Security actions covered include access to keys, magazine security, job site security, signage, surveillance and security training. Subcommittee staff has determined this list was not sent local and state authorities.

In addition, during the August 2004 Subcommittee hearing, Mr. Walfred A. Nelson, Deputy Assistant Director, Enforcement Programs and

Services Division, Bureau of Alcohol, Tobacco, Firearms and Explosives stated, “we started developing another letter to go out (to local authorities) offering to do voluntary inspections of explosive storage facilities.” Mr. Nelson went on to say “we can certainly develop a [inventory] list from this effort, I would think.”⁶

DISCUSSION OF HEARING ISSUE

1. What challenges do federal, state and local authorities face in securing and protecting publicly owned explosive storage facilities?

FT Oversight of State and Local Storage Facilities

GAO found ATF has no means to ensure that all state and local government facilities nationwide are in compliance with federal storage regulations. ATF’s authority to oversee explosives storage facilities is limited to the private sector. The Bureau uses a licensing procedure to identify and inspect storage facilities. There are approximately 12,000 private sector licensees. Currently, state and local law enforcement agencies are not required to obtain a federal license to use and store explosives. As a result, ATF officials indicated that they have no way of knowing the extent to which these facilities are complying with federal storage, safeguard and security regulations. (**Attachment 2, pg. 13**)

State and Local Storage Facilities Security Enhancements

While it is not possible to eliminate the vulnerability of all attractive terrorist targets throughout the country, strategic improvements in security can make it more difficult for attacks to succeed and can lessen the impact of attacks that may occur. In addition to strategic security enhancements, tactical security improvements can be rapidly implemented to neutralize potential targets. Some are arguing explosives storage facilities operated by state and local agencies may be more vulnerable to theft, sabotage or terrorist attack than those operated by businesses and private individuals, which are regulated by the ATF. Since each state regulates publicly

⁶ *HOMELAND SECURITY: Surveillance and Monitoring of Explosive Storage Facilities*, Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, August 2, 2004, Serial No. 108-259, page 42.

operated explosives storage facilities differently, some argue that uniform nationwide security standards for public storage facilities should be implemented.

Inventory of State and Local Storage Facilities

ATF officials acknowledged the Bureau does not collect nationwide information on the number and location of state and local government explosives storage facilities, nor does the Bureau know the types and amounts of explosives being stored in storage facilities. Compared with the private sector, ATF collects descriptive information including the location of the storage magazines, the types and amounts of explosives stored, and whether the magazines are in compliance with federal storage regulations. ATF officials indicated the information obtained from inspections, along with the results from inspections of licensees, is maintained in ATF's NSpect nationwide inspection database.

During the August 2004 field hearing, the ATF witness indicated a letter would be sent to local and state officials regarding security and site location of explosive storage facilities. It should be noted two weeks prior to this hearing Subcommittee staff was advised that the letter from ATF still had not been sent but would be sent the week of October 24, 2005. The letter attempts to ascertain the number of state and local explosive storage facilities. ATF requested state and local agencies with storage facilities to voluntarily report the locations of magazines to ATF. The letter reminds officials that federal regulations require local authorities to report the loss or theft of explosive material to ATF. In addition, ATF advised officials that the Bureau would continue the policy to inspect storage facilities upon request and offer guidance to ensure that storage requirements are being met. (Attachment 10)

Inspection of State and Local Storage Facilities

Based on site visits to state and local storage facilities, GAO found there is wide variation in the extent of security provided for storage facilities including the presence of exterior and interior fencing, other barriers to restrict vehicle or pedestrian access, and security personnel. Federal explosives storage regulations do not require physical security enhancements. Instead, federal regulations require theft-resistant magazine

construction and weekly inspections of magazines. However, GAO found some sites were not in compliance with even the federal storage regulations.

According to some, there is resistance to mandating inspection of local and state storage facilities and security enhancements due to cost considerations and manpower shortages. However, according to GAO, extending ATF's regulatory authority to issue licenses and inspect state and local storage facilities would not add significantly to ATF's current private sector workload. ATF officials stated that if the agency were to be required to conduct mandatory inspections of state and local government storage facilities, they would likely need additional resources to conduct the inspections because they are already challenged to keep up with inspections that are mandated as part of the explosives licensing requirements.

One factor that affects ATF's ability to meet inspection goals is that inspectors have to conduct inspections of licensed firearms dealers, manufacturers, and importers, as well as explosives licensees. As noted above, ATF must physically inspect explosives licensees at least once every 3 years or about one-third (4,000) of the roughly 12,000 licensees each year. According to ATF officials, because license applications and renewals are not evenly distributed over this 3-year cycle, some years there may actually be more or less than 4,000 inspections. ATF currently has 723 field inspectors, 620 of whom regularly conduct explosives and firearms inspections (the others are in supervisory or administrative positions). About 20 percent of the inspection time is spent on explosives inspections and the remainder is spent on firearms.

Thefts from State and Local Storage Facilities

There are two federal reporting requirements relating to the theft of explosives. One is specific to all federal explosives licensees and requires any licensee to report any theft or loss of explosives to ATF within 24 hours of discovery. The second reporting requirement generally requires any other "person" who has knowledge of the theft or loss of any explosive materials from his stock to report to ATF within 24 hours.

Although the term "person" as defined in law and regulation does not specifically include state and local government agencies, ATF has historically interpreted this requirement as applying to state and local government explosives storage facilities. With respect to the second

reporting requirement, according to ATF, the legislative history of the Organized Crime Control Act of 1970⁷ indicates that Congress believed visibility over *incidents* of stolen explosives was necessary to effectively enforce any federal explosives regulatory statute. While ATF has interpreted the theft reporting requirement as applying to state and local government explosives storage facilities, ATF officials acknowledged that state and local government entities could be unsure as to their coverage under the theft reporting requirements. As a result, there is concern some state and local government entities may not know they are required to report such incidents to ATF, and this lack of information could impair ATF's ability to monitor thefts and take appropriate investigative action.

GAO identified five state and local government entities that had experienced an incident of theft or reported missing explosives including two local law enforcement agencies, two state universities, and one involving a state department of transportation. GAO found one of the five incidents did not appear in ATF's nationwide database of reported thefts and missing explosives. Based on these findings, GAO and others argue the actual number of thefts occurring at state and local government storage facilities nationwide could be more than the number identified by ATF data.

Finally, the Department of Justice (DOJ) Office of Inspector General (OIG) also found that ATF lacks the authority to inspect state and local government explosives storage facilities as a result of their recent review of the implementation of the Safe Explosives Act. **(Web Resource 2)** The DOJ OIG recommended ATF "critically consider" legislative proposals to strengthen state and local explosives storage facility security including maintaining an inventory of state and local storage facilities and promulgation of regulations for the secure storage of state and local law enforcement agencies' explosive materials, including video surveillance or an alarm system capable of notifying the agency of unauthorized entry. **(Attachment 11)**

⁷ Title XI of Public Law 91-452, 84 Stat. 922, 952 (1970)

WITNESS TESTIMONY

PANEL ONE

Ms. Laurie E. Ekstrand, Director, Homeland Security and Justice Team U.S. Government Accountability Office will testify about ATF's role and responsibility for the safeguard and security of public explosive storage facilities.

Mr. Michael Gullledge, Director, Office of Evaluation and Inspections Division, Office of the Inspector General (OIG), U. S. Department of Justice (DOJ) will testify about the Inspector's General recent review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Implementation of the Safe Explosives Act.

Mr. Louis P. Raden, Assistant Director, Enforcement Programs and Services Division, the Bureau of Alcohol, Tobacco, Firearms and Explosives will testify about GAO's findings and recommendations regarding security for the protection of public explosives storage facilities.

PANEL TWO

Mr. Fernando Gonzalez, Battalion Chief, Fort Worth Fire Department, Division of Arson/Bomb Investigation will testify about the enhanced security features implemented at the Fort Worth explosives storage facilities, security guidance for the storage of explosive material provided by state, county or federal authorities, and the availability of financial assistance for purchasing security enhancements for the storage of explosives material.

Dr. Tibor G. Rozgonyi, Professor and Head, Mining Engineering Department, Colorado School of Mines will testify about his efforts to improve explosives storage facility security at the Colorado School of Mines.

Sgt. Stanley Mathiasen, Chairman, National Bomb Squad Commanders Association will present a nationwide perspective about the most pressing need for protecting explosive storage facilities, the security guidance for the storage of explosive material provided by state, county or federal authorities, and the availability of financial assistance for purchasing security enhancements for the storage of explosives material.

Dr. Vilem Petr, Department of Mining and Inspection, State of Colorado is also a Colorado State Explosives inspector who will testify about Colorado regulations concerning the storage and security of explosive materials.

Mr. James Christopher Ronay, President, The Institute of Makers of Explosives (IME) will testify about the adequacy of state and local guidelines for the protection of explosives storage facilities and how the federal government can assist in their protection. His remarks will focus on the Institute of Makers of Explosives recent Safety Library Publication No. 27, *Security in Manufacturing, Transportation, Storage and Use of Commercial Explosive*.

The Honorable Don Horsley, County Sheriff, San Mateo County will testify about how the San Mateo County Sheriff's office has dealt with losing their explosives storage facility, including how having to store explosives in another jurisdiction has effected training, storing of evidence, and authenticating evidence for trial purposes. Sheriff Horsley will also discuss how last years theft has affected the county's plans for a new storage facility.

Lt. Gary Kirby, San Jose Police Department will testify about the enhanced security features implemented at the San Jose explosives storage facilities, security guidance for the storage of explosive material provided by state, county or federal authorities, and the availability of financial assistance for purchasing security enhancements for the storage of explosives material.

ATTACHMENTS

1. Letter dated July 23, 2004 from Chairman Christopher Shays, National Security, Emerging Threats and International Relations Subcommittee and Congressman Tom Lantos (CA-12) to Mr. David Walker, U.S. Comptroller General, Government Accountability Office (GAO), Washington, D.C.
2. *ATF: Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Under Reported*, Government Accountability Office, GAO-06-92, October 2005.
3. United States Code Annotated, Title 18, Crimes and Criminal Procedure, Chapter 40, Section 841-848, *Importation, Manufacture, Distribution and Storage of Explosive Materials*.
4. Construction Guide for Storage Magazines, Institute of Makers of Explosives, Safety Library Publication No. 1, August 1993.
5. Code of Federal Regulations, Title 18, *Magazine Construction and Storage Requirements* slides.
6. Code of Federal Regulations, Title 18, Subpart K, *Storage of Explosive Material*.
7. Department of the Treasury, The Bureau of Alcohol, Tobacco and Firearms, *Safe Explosives Act Fact Sheet*, December 12, 2002.
8. Department of the Treasury, The Bureau of Alcohol, Tobacco and Firearms, ATF Poster, *Federal License or Permit Requirement*.
9. Threat Assessment, *Security Checklist, Attachment 1*, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

WEB RESOURCES

1. Department of Justice, Bureau of Alcohol, Tobacco and Firearms and Explosives <www.atf.gov>
Visited September 21, 2005
2. Department of Justice, Office of the Inspector General, Review of the Bureau of Alcohol, Tobacco and Firearms and Explosives' Implementation of the Safe Explosives Act, No. I-2005-005, March 2005. <<http://www.usdoj.gov/oig/reports/ATF/e0505/final.pdf>>
Visited August 22, 2005

WITNESS LIST

Panel One

Ms. Laurie E. Ekstrand, Director
Homeland Security and Justice Team
U.S. Government Accountability Office

accompanied by

Mr. Phillip Caramia, Senior Analyst
Homeland Security and Justice Issues
U.S. Government Accountability Office

Mr. Michael Gullede, Director
Office of Evaluation and Inspections Division
Office of the Inspector General
U. S. Department of Justice

Mr. Louis P. Raden, Assistant Director
Enforcement Programs and Services Division
The Bureau of Alcohol, Tobacco, Firearms and Explosives
U.S. Department of Justice

Panel Two

Mr. Fernando Gonzalez, Battalion Chief
Fort Worth Fire Department,
Division of Arson/Bomb Investigation

Dr. Tibor G. Rozgonyi
Professor and Head, Mining Engineering Department
Colorado School of Mines

Sgt. Stanley Mathiasen, Chairman
National Bomb Squad Commanders Association

Dr. Vilem Petr,
Department of Mining and Inspection
State of Colorado

Mr. James Christopher Ronay, President
The Institute of Makers of Explosives (IME)

The Honorable Don Horsley, County Sheriff
San Mateo County Sheriff's Office

Lt. Gary Kirby
San Jose Police Department